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JEANNE HICAS, CLERK

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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. CR 2008-1339

) Division 6

) DEFENDANT'S POSITION ON
) PUBLIC RECORDS REQUESTS

) Honorable Thomas B. Lindberg

Defendant Steven C. DeMocker, by and through counsel, hereby provides the Court with his position with respect to the public records requests of ABC and CBS and the agreement between ABC and the Yavapai County Attorney's Office regarding ABC's request.

BACKGROUND

On January 8, 2009, producers from ABC's 20/20 and CBS's 48 Hours Mystery television programs made separate requests for access to public records from the Yavapai County Attorney, seeking records "in the possession of the Yavapai County

1 Attorney's Office" pursuant to Arizona Public Records Law, A.R.S. §39-121 *et seq.*
2 ABC indicated it was seeking:
3

4 All records, reports, or documents in any medium (including but
5 not limited to printed, electronic, video, audio, photographic) including
6 Sheriff's investigative reports, crime scene photos or video, video or audio
7 recordings of the suspect, Steven DeMocker, and witnesses, including
8 Katie DeMocker (sic) and her boyfriend; other video or photographs
9 created in the course of the investigation; search warrants, charging
10 documents, affidavits, witness statements, autopsy findings and any other
11 reports from the medical examiner. Ruth Kennedy's 911 call recording
12 and any police or other emergency dispatch radio traffic recordings related
13 to the murder of Carol Kennedy on July 2, 2008.

14 (See Exhibit A). On January 23, 2009, ABC amended its request to exclude
15 autopsy photos, crime scene photos showing the victim, Ms. Kennedy, or skull x-rays.
16 (See Exhibit B).

17 CBS did not specify any particular records. (See Exhibit C). Both ABC and
18 CBS submitted request forms certifying that the requests were not for commercial
19 purposes pursuant to A.R.S. § 39-121.03.

20 On January 8, 2009 the Yavapai County Attorney's Office moved for an *in*
21 *camera* review of certain photographs of the crime scene, the autopsy and items
22 regarding skull reconstruction to determine whether they are subject to release pursuant
23 to the Arizona Public Records Law. The County objected to release of these materials
24 on the grounds that their release would violate victim's rights. This Court set a hearing
25 on February 6, 2009 to address the issues raised by the request. ABC's counsel, Mr.
26 Bodney requested and was granted an unopposed continuance to February 10, 2009.

27 On January 28, 2009, Jack Fields of the Yavapai County Attorney's Office
28 notified counsel that he and ABC had reached an agreement in principle and forwarded
a chart outlining the agreement. (See Exhibit D). Essentially, the agreement is that no
witness statements in the form of audio, video or written transcript, other than Mr.

1 DeMocker's, will be released and no photographs or video that include the body of Ms.
2 Kennedy will be released. However, the other requested items, including photographs
3 and video of the bloody scene, will be released. Other items to be released pursuant to
4 the agreement include autopsy findings and any other reports from the medical
5 examiner, the recording of the 911 call of Ruth Kennedy, and police and emergency
6 dispatch radio traffic recordings. The County has indicated that it intends to withdraw
7 its motion as a result of this agreement.

8 Mr. DeMocker hereby states his position with respect to these public records
9 requests and the agreement between ABC and the Yavapai County Attorney's Office.
10 Mr. DeMocker is concerned that release of this information will violate his due process
11 and fundamental fairness rights to a fair trial by an impartial jury under the United
12 States and Arizona Constitutions and that release of photographs and audio and video
13 recordings would violate his privacy rights and the privacy rights of his minor children.

14 ARGUMENT

15 16 I. Release Will Violate Mr. DeMocker's Fifth, Sixth and Eighth 17 Amendment Rights.

18 Release of the requested and agreed upon information will violate Mr.
19 DeMocker's Fifth, Sixth and Eighth Amendment rights and his rights under the Arizona
20 Constitution, article II, Section 4 and 24. Pursuant to due process and fundamental
21 fairness, Mr. DeMocker is entitled to a fair trial by an impartial jury under both the
22 Arizona and United States Constitutions. Ariz. Const. art. II, § 4, 24; U.S. Const.
23 Amend. V, VI, XIV. Pretrial publicity violates this right when it pervades the court
24 proceedings to the extent that prejudice can be presumed or when there is actual
25 prejudice by invasion of the objectivity of the jurors. *See State v. Cruz*, 219 Ariz. 149,
26 156, 181 P.3d 196, 203 (2008) (internal quotations omitted). When pretrial publicity
27 rises to this level, it renders a fair trial by an impartial jury virtually impossible. *See e.g.*

1 *Coleman v. Kemp*, 778 F.2d 1487, 1537 (11th Cir. 1985) (overwhelming publicity in
2 county with population of 7000 led to finding that prejudice from pretrial publicity was
3 presumed); *see also State v. Bible*, 175 Ariz. 549, 858 P.2d 1152 (1993) (citing
4 *Coleman*). Equally important, in this case, all decisions must be considered in light of the fact
5 that the death penalty “is a punishment different from all other sanctions in kind rather than
6 degree.” *Woodson v. North Carolina*, 428 U.S. 2890, 303-304 (1976). The Supreme Court has
7 held consistently that because death is uniquely severe and irreversible, “the Eighth
8 Amendment requires increased reliability of the process by which capital punishment may be
9 imposed.” *Herrera v. Collins*, 506 U.S. 390, 405 (1993).

10 A “google” search for the terms “Steven DeMocker” and “arrested” generates 797
11 results as of January 26, 2009. A number of the written comments from the Prescott
12 community have been removed by news organizations as they violate terms of use policies
13 because of their venomous attacks on Mr. DeMocker. Prescott is a small community with a
14 population of just under 34,000 people. Media saturation at such an early stage of the
15 proceedings already seriously threatens Mr. DeMocker’s rights under the Fifth, Sixth and
16 Eighth Amendments to the United States Constitution and his attendant rights under the
17 Arizona Constitution. Release of the requested information would only exacerbate the on-
18 going violation of DeMocker’s rights. Further media coverage, replete with bloody crime
19 scene photos and video, and recordings of Ms. Kennedy’s 911 call, radio dispatch traffic and
20 Mr. DeMocker’s recorded statements will only serve to overwhelm the Prescott community,
21 making it impossible for Mr. DeMocker to receive the fair trial by an impartial jury to which he
22 is entitled by law.

1
2 **II. Release of Documents, Photographs, and Audio and Video Recordings Will**
3 **Violate Mr. DeMocker and his Daughter's Privacy Rights.**

4 Release of the requested and agreed documents, photographs and audio
5 and video recordings will violate the privacy rights of Mr. DeMocker and his
6 young daughters, Charlotte and Katie DeMocker. Specifically, both Mr.
7 DeMocker and his two children, Katie and Charlotte DeMocker (who is a minor),
8 have a cognizable and protectable privacy interest in preventing the public
9 release of crime scene photos or videos; video or audio recordings of Mr.
10 DeMocker; other videos or photographs created in the course of the
11 investigation; autopsy findings and any other reports from the medical examiner
12 and the forensic anthropologist employed to reconstruct the victim's skull; and
13 Ruth Kennedy's 911 call recording and any police or other emergency dispatch
14 radio traffic recordings related to the murder of Carol Kennedy on July 2, 2008.
15 These documents, photos and audio and video recordings, including those that do
16 not include the victim, include many bloody, gruesome images and descriptions
17 that are deeply disturbing.

18 The DeMockers' privacy interests should outweigh any general public
19 interest in disclosure. Where privacy interests do outweigh the general public
20 interest in disclosure, an officer or custodian may rightfully refuse inspection.
21 *Carlson v. Pima County*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984). *See*
22 *e.g. A.H. Belo Corp. v. Mesa Police Department*, 202 Ariz. 184, 42 P.3d 615
23 (App. Div. 1 2002). In *Belo* the court held that a family's privacy interest in the
24 audio recording of a 911 call outweighed the presumption favoring disclosure.
25 *Id.* The family in *Belo* explained that disclosure should be prohibited because the
26 911 call would be difficult to hear, would remind them of the painful day when
27
28

1 their child was injured and would interfere with the family's healing. *Belo*, 202
2 Ariz. at 187, 42 P.3d at 618. The court found that the family's privacy interest
3 trumped the presumptive public interest in disclosure. *Belo*, 202 Ariz. at 188, 42
4 P.3d at 619. "Indeed, we cannot imagine a more fundamental concern or one
5 more directly associated with the intimate aspects of identity and family
6 autonomy than the desire to withhold from public display the recorded suffering
7 of one's child." *Id.* The court found that release of the transcript of the call was
8 sufficient, while acknowledging it was not what the requestor wanted and did not
9 have the dramatic properties of an audio tape. *Id.* The court noted that the public
10 interest in receiving access to public records "decreases when alternative means
11 of receiving the information are available." *Id.* (citing *Scottsdale Unified Sch.*
12 *Dist. V. KPNX*, 191 Ariz. 297, 303, 955 P.2d 534, 540 (1998) (internal quotations
13 omitted)).

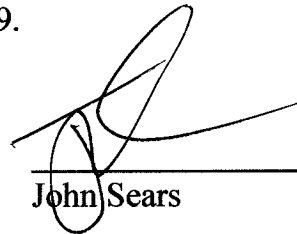
14 Here the DeMockers' have privacy interests similar to the family in *Belo*
15 and alternative means of receiving the information are likewise available. Katie
16 and Charlotte DeMocker have lost their mother and Steven DeMocker has lost
17 the woman he was married to for over twenty years and the mother of his
18 children. From their perspective, the crime remains unsolved and is still very
19 fresh, raw and painful. Photographs or videos of the bloody scene, even without
20 Ms. Kennedy in the them; autopsy or forensic examination reports; their
21 grandmother's 911 call describing their mother's last words; radio dispatches of
22 police discussing the scene of their mother's death; and video or audio recordings
23 of Mr. DeMocker, regarding the death of their mother would be extremely
24 difficult to hear, would remind them of that very painful day and would make it
25 impossible for them to continue with their healing. The court should conclude,
26 as in *Belo*, that privacy interests here outweigh the general presumption of
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1 disclosure. Additionally, transcripts of some of this information can be made
2 available and should be sufficient to meet the public interest in receiving access
3 to the public record, as in *Belo*.

4 Lastly, the County Attorney's Office and ABC have agreed that witness
5 interviews, other than Mr. DeMocker's, will not be released because release
6 "would allow witnesses to compare their versions of events, which will damage
7 the reliability of the testimony of witnesses at trial" citing *Phoenix Newspapers,*
8 *Inc. v. Keegan*, 201 Ariz. 344, 348, 35 P.3d 105, 109 (App. 2001). The same is
9 true with respect to release of Mr. DeMocker's interview. At this point, the state
10 has been ordered to return to the grand jury to seek a true bill against Mr.
11 DeMocker. Mr. DeMocker's interview should be treated similarly to all other
12 witnesses unless and until he is re-indicted.

13 DATED this 30th day of January, 2009.

14
15
16 By


John Sears

17
18 OSBORN MALEDON, P.A.

19 Larry A. Hammond
20 Anne M. Chapman
21 2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793
Attorneys for Defendant

22 ORIGINAL of the foregoing filed
23 this 30th day of January, 2009, with:

24 Jeanne Hicks,
25 Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

1 COPIES of the foregoing hand delivered
2 this 30th day of January, 2009 to:

3 The Hon. Thomas B. Lindberg
4 Judge of the Superior Court
5 Division Six
6 120 S. Cortez
7 Prescott, AZ 86303

8 Mark K. Ainley, Esq.
9 Office of the Yavapai County Attorney
10 255 E. Gurley
11 Prescott, AZ 86301-3868

12 Jack Fields, Esq.
13 Office of the Yavapai County Attorney
14 255 E. Gurley
15 Prescott, AZ 86301-3868

16 COPIES of the foregoing mailed by U.S.Mail
17 this 30th day of January, 2009 to:

18 David Bodney
19 Steptoe & Johnson
20 Collier Center
21 201 East Washington Street, 16th Floor
22 Phoenix AZ 85004

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25
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2356429v1



ATTENTION: PENNY CRAMER

January 8th, 2008

Penny Cramer
Administrative Assistant
Yavapai County Attorney's Office
Via Fax: 928-771-3110.

Dear Penny:

I have filled out a records request form it is the 2nd page of this fax.

Please note ABC News is requesting all records related to the DeMocker case, including but not limited to.

All records, reports, or documents in any medium (including but not limited to printed, electronic, video, audio, photographic) including Sheriff's investigative reports, crime scene photos or video, video or audio recordings of the suspect, Steven DeMocker, and witnesses, including Katie DeMocker and her boyfriend; other video or photographs created in the course of the investigation; search warrants, charging documents, affidavits, witness statements, autopsy findings and any other reports from the medical examiner. Ruth Kennedy's 911 call recording and any police or emergency dispatch radio traffic recordings related to the murder of Carol Kennedy on July 2, 2008.

This request should serve as notice that we also request any documents that fall under the scope of the Arizona Public Records Law (A.R.S. 39-121-125) related to this case that are created in the future.

Please also note, we have asked that the fee of .25 per copy be waived for this request. This request is for a non-commercial use. If this waiver request cannot be accommodated, ABC requests some more reasonable fee be negotiated.

If written documents exist in digital form, we ask that you save paper and provide the documents in digital form, via email or some other agreed upon means.

Please feel free to contact me with any questions about this request at 212-456-5968 or Andrew.Paparella@ABC.com

Best Regards,

A handwritten signature in black ink, appearing to read "Andrew Paparella", written over a horizontal line.

Andrew Paparella
Producer, ABC News 20/20



Yavapai County Attorney

255 East Gurley Street
 Prescott, AZ 86301
 (928) 771-3344 (Criminal)
 (928) 771-3338 (Civil)
 Facsimile (928) 771-3110

SHEILA POLK
 Yavapai County Attorney

REQUEST FOR ACCESS TO PUBLIC RECORD

Pursuant to A.R.S. §§ 39-121 and 39-121.01:

I am herewith requesting access to the following-described public record in the possession of the Yavapai County Attorney's Office:

Request Date: 1.6.2009 Date of Violation: 7.2.2008

Agency: Sheriff DR#: 08-029129

Suspect: STEVEN DEMACKER Adult ☒ Juvenile ☐

Victim: CAROL Kennedy

Location of Occurrence/Precinct: PRESCOTT

Additional Comments/Information: PLEASE CONTACT me to
discuss options for delivery. CAN YOU EMAIL
DIGITAL COPIES? OR FTP them?

In accordance with A.R.S. § 39-121.03, I certify that these records are not being requested for a commercial purpose.

Name: ANDREW PAPARELLA ABC NEWS

Address: 147 COLUMBUS AVE.

NEW YORK, NY 10023

Phone: 212.456.5968

Signature: [Signature]

*Please note: Records will be supplied within a reasonable amount of time – usually within 7-10 working days. There is a charge of \$0.25 per page. PLEASE WAIVE Fee.

OFFICE USE ONLY

Date received: _____ Attorney reviewing: _____

Secretary: _____ CA File No.: _____

Comments: _____

ATTENTION: PENNY CRAMER

January 23rd, 2008

Penny Cramer
Administrative Assistant
Yavapai County Attorney's Office
Via Fax: 928-771-3110.

Dear Penny:

Please consider this official notification that ABC News 20/20 would like to amend its original records request under Arizona Public Records Law (A.R.S. 39-121-125) in the DeMocker case as follows:

We do not want crime scene photos showing the victim, or autopsy photos, or skull x-rays.

Please feel free to contact me with any questions about this request at 212-456-5968 or Andrew.Paparella@ABC.com

Best Regards,

Andrew Paparella
Producer, ABC News 20/20

48 HOURS MYSTERY

CBS NEWS 24 W. 57th St. New York, NY 10019 Tel: 212-975-4848 Fax: 212-975-5797

DATE: 1/5/08

TO: Penny Cramer

FAX #: 918-771-3110

FROM: Jane Cohen

State of Arizona v.

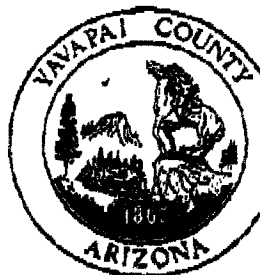
RE: Steven Demock

COMMENT:

Thanks for your help Penny.
Please let me know if you need
any additional information.

PHONE # OF SENDER: 212-975-6813

PAGES (INCLUDING COVER SHEET): 2



Yavapai County Attorney

255 East Curley Street
 Prescott, AZ 86301
 (928) 771-3344 (Criminal)
 (928) 771-3338 (Civil)
 Facsimile (928) 771-3110

SHEILA POLK
 Yavapai County Attorney

REQUEST FOR ACCESS TO PUBLIC RECORD

Pursuant to A.R.S. §§ 39-121 and 39-121.01:

I am herewith requesting access to the following-described public record in the possession of the Yavapai County Attorney's Office:

Request Date: 1/5/08 Date of Violation: Death: July 2, 2008
Arrest: Oct 23, 2008

Agency: _____ DR#: _____

Suspect: Steven Democker Adult ☒ Juvenile _____

Victim: Carol Kennedy

Location of Occurrence/Precinct: Prescott

Additional Comments/Information _____

In accordance with A.R.S. § 39-121.03, I certify that these records are not being requested for a commercial purpose.

Name: Dane Cohen (48 Hours)

Address: 524 W 57th Street
NY, NY 10019

Phone: 212-975-6813

Signature: [Signature]

*Please note Records will be supplied within a reasonable amount of time - usually within 7-10 working days. There is a charge of \$0.25 per page.

OFFICE USE ONLY

Date received: _____ Attorney reviewing: _____
 Secretary: _____ CA File No.: _____
 Comments: _____

Rec'd 1-5-09
100pm
[Signature]

STATE V. STEVEN CARROLL DEMOCKER
CR 2008-1339
Summary of Public Records Request

Description	Summary of Content	State's Position on Public Release	Object to Release	Court Ruling
Investigative Reports	Primary investigation reports resulting in charges against the defendant	Will be released when redacted of private information.		
Crime scene photographs and other non-autopsy photographs	Photographs of the crime scene and other investigative photographs, excluding photographs taken during the autopsy of the victim.	Will be released when redacted of private information.		
Search warrants, officer affidavits, charging documents	Documents used to gain authority for investigative searches, and documents prepared for charging.	Will be released when redacted of private information.		
Autopsy report	Report of the forensic autopsy of the victim prepared by the Medical Examiner(s)	Will be released when redacted of private information.		
Defendant statements	Audio, written or transcribed statements of the defendant	Will be released when redacted of private information.		
Documentary evidence	Financial records of defendant and victim, other documentary evidence gathered in the course of investigation	Will be released when redacted of private information.		
911 recording	Recording of the 911 telephone call of Ruth Kennedy	Will be released.		
Autopsy Photographs	Graphic photographs of the forensic autopsy of the deceased victim	Requested by ABC News (20/20) and CBS News (48 hours). Autopsy photographs are public records. However they are not subject to release because release would violate constitutional provisions of the 'Victims'	State	

		<p>Bill of Rights. <i>Article 2, §2.1, Arizona Constitution.</i></p> <p>Under the Victims' Bill of Rights, victims in this case include the deceased victim, and the elderly mother and children of the deceased victim. <i>Id at §2.1 (C).</i> Release of photographs would result in the widespread public circulation of images of the deceased victim in an extremely undignified state. Release of the Autopsy Photographs would be a disrespectful and abusive act to the deceased victim, as well as the elderly mother and daughters of the deceased. <i>Id at §2.1 (A) (1); A.H. Belo Corp. v. Mesa Police Dept., 202 Ariz. 184, 188, 42 P.3d 615, 619 (App. 2002).</i></p>		
Physical Evidence	Various physical evidence gathered by the State during investigation	<p>Requested by CBS News (48 hours). Physical evidence is not a public record. <i>A.R.S. §41-1350.</i> However, physical evidence is not subject to release because release of physical evidence would be extremely prejudicial to the State's case. Distribution to others would ruin the chain of custody necessary to prove the reliability of the evidence, rendering the evidence useless. <i>Phoenix Newspapers, Inc. v. Keegan, 201 Ariz. 344, 348, 35 P.3d 105, 109 (App 2001).</i></p>	State	
Witness interviews and statements	Recorded interviews of witnesses that may be called at trial conducted in the course of the criminal investigation.	<p>Requested by ABC News (20/20) and CBS News (48 hours). The witness interviews are public records. However, they are not subject to release at this time as release would be detrimental to the integrity of witness testimony at trial. Release would allow witnesses to compare their versions of events, which will damage the reliability of the testimony of witnesses at trial. <i>Phoenix Newspapers, Inc. v. Keegan, 201 Ariz. 344, 348, 35 P.3d 105, 109 (App 2001).</i></p>	State	